IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4442 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MOHAMMAD SAFI IBRAHIMBHAI - Petitioner(s)
Versus
STATE OF GUJARAT THR'CHIEF CONTROLLING REVENUE & 1 - Respondent(s)

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Appearance :
MR MP PRAJAPATI for Petitioner(s) : 1,
MR KL PANDYA, AGP for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 20/06/2006

CAV JUDGMENT

This petition has been preferred against the order dated 12th January,2006 passed by the Collector of

Stamp, Nadiad (Annexure "B" to the memo of the petition) as well as against the order dated 28th September,2001 passed by the Collector of Stamps, Nadiad (Annexure "C" to the memo of the petition).

2. Learned advocate for the petitioner submitted that the order dated 28th September,2001 passed by respondent no.2 was never served upon petitioner and, therefore, could not preferred an appeal within a period of 90 days under section 32-B of the Bombay Stamp Act,1958 (hereinafter referred to as “the Act,1958).

3. It is also vehementally submitted by the learned advocate for the petitioner that the order passed by the Collector of Stamps, Nadiad (Annexure "C" to the memo of the petition) is absolutely a non-speaking order. No reasons have been assigned and straightaway conclusion has been arrived at by respondent No.2. Learned advocate for the petitioner has also relied upon several judgments delivered by this Court whereby, it has been pointed out that if a non-speaking order passed by respondent no.2, the impugned order deserves to be quashed and set aside. Looking to the impugned order at Annexure “B”, it appears that no reasons have been assigned for non-acceptance of the defences raised by the petitioner. The price of the

land in question was Rs.15,000/-, for which, conveyance deed was executed. The market price of the land in question arrived at by respondent no.2 was at Rs.22,75,110/-. How this figure has been arrived at, is not known to the petitioner. There is a total non-application of mind by respondent no.2 for arriving at, the market value of the land in question and, therefore, the order at Annexure "C" deserves to be quashed and set aside. The order at Annexure "C" was never served upon the petitioner and, hence, there is some delay in preferring the appeal and, so, both the orders at Annexure "B" and "C" deserve to be quashed and set aside.

4. Learned Assistant Government Pleader Mr.K.L.Pandya for the respondents submitted that the orders passed by respondent No.2 is true, correct and in consonance with the facts of the present case. The market value arrived at by respondent No.2 is true and correct. The petitioner had not preferred the appeal within the stipulated time and, therefore, respondent no.2 had passed the order dated 12th January,2006 (Annexure "B" to the memo of the petition)

5. Having heard the learned counsel for both the sides and looking to the facts and circumstances of the

case, in my opinion, order dated 28th September,2001 passed by respondent No.2 – Collector of Stamps, Nadiad (Annexure "C" to the memo of the petition) as well as the order dated 12th January,2006 passed by the Collector of Stamps, Nadiad (Annexure "B" to the memo of the petition) require to be quashed and set aside, for the following facts and reasons:-

(i) The impugned order dated 28th September,2001 passed by respondent No.2, which is a non-speaking order. No reasons have been assigned for arrived at the market value of Rs.22,75,110/- instead of Rs.15,000/-, for which, the conveyance deed was executed. The figure of market value cannot come in the mind of respondent No.2 from heaven or sky. There must be some basis. No such basis or calculation has been given for arriving at 150 times more market value than the conveyance deed which was entered into by the petitioner. Looking to the nature of the order, which is at Annexure “C” to the memo of the petition, it is apparent that only 'one line reasoning' has been referred to the effect that “no defences have been raised by the petitioner”. By no stretch of imagination, this can be said to be a reasoned order. Burden of proof is upon respondent. “Burden of proof lies upon him who affirms; and not upon him, who denies”. It

is the say of respondent authority that deed of conveyance is revealing lesser market value. It is the respondents, who are fixing higher market value. Therefore respondent has to justify their fixation of higher market value. Respondents cannot throw their burden, upon petitioner. Such type of reasoning tantamounts to arbitrariness. Arbitrariness and equality are sworn enemies of each other. When arbitrariness is present, equality is always absent and where, equality is present, arbitrariness is always absent. Looking to the nature of order dated 12th January,2006, it seems that only one line reasoning is given that the grievances raised by the petitioner are not acceptable. No reasons worth the name have been assigned for arriving at the market value of the land in question at Rs.22,75,110/-. It is the duty of respondent no.2 to justify such a higher market value because it is their say that the market value of the land in question is at Rs.22,75,110/-. Thus, the impugned order at Annexure "C" is a non-speaking order.

(ii) It is also contended by the learned advocate for the petitioner that respondent no.2 has not applied his mind towards any of the defences raised by the petitioner and in cyclostyled format, the impugned order has been

passed, wherein some gaps have been filled in and one and two sentences have been added. Such type of orders are violative of principle of natural justice. This Court has time and again delivered judgments and has quashed and set aside such type of orders passed by respondent No.2. Learned advocate for the petitioner has also relied upon the judgment dated 11th August,2003 delivered by this Court in **Special Civil Application No.4434 of 2003** and also a decision dated 3rd April,2002 rendered by this Court in the case of **Pradhyumanbhai Mohanlal Patel V/s. State of Gujarat** reported in **2003(1) GLR 454**. Learned advocate for the petitioner has also relied upon the judgment dated 22nd February,2005 delivered by Division Bench of this Court in **Letters Patent Appeal No.109 of 2005 in Special Civil Application No.16787 of 2004** as well as order dated 10th October,2005 passed by this Court in **Special Civil Application No.13729 of 2005 along with other group of matters** and has pointed out that the order dated 28th September,2001 passed by respondent No.2 (Annexure "C" to the memo of the petition) deserves to be quashed and set aside. Looking to the impugned order and comparing it with the facts of the present case, I am also of the opinion that the impugned order is a non-speaking order since no reasons have been assigned for fixing the market value at Rs.22,75,110/-. The order

dated 28th September,2001 at Annexure “B” to the memo of the petition is a cyclostyled type order in which blanks have been filled in. No reasons have been assigned for filling in those blanks.

(iii) As per the Bombay Stamp (Determination of Market Value of property) Rules,1984, it is the duty of the Collector to provide the basis on which true market value of property and proper duty payable thereon has been provisionally determined by him. Rule 4 of the Rules,1984 reads as under:-

> **“4. Procedure to be followed by the Collector for determining the true market value of the property which is the subject matter of the instrument:-**
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> “4(i) on receipt of the instrument under sub-section (3) of Section 31 or sub-section (1) of section 31-A, the Collector of the District, where the thinks fit to do so, may for the purpose of his inquiry:-
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> (a) call for any information or record having bearing, on the question before him from any public office, officer or authority under the Central Government, State Government or any local authority;
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> (b) examine and record statement from any member of the public officer or the authority under the Central Government or State Government or any local authority, and
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> (c) inspect or empower any officer under him to inspect the property after due notice to the parties concerned.

(2) After examining the said information, records and evidence, if any, before him Collector of the District shall issue a notice showing the basis on which true market value of property and proper duty payable thereon has been provisionally determined by him, to every person to whom according to the provisions of Section 30 is liable to pay stamp duty in respect of such instrument requiring such person to submit within 15 days from the date of the service of the notice upon such person, his representation in writing alongwith all the evidence in support of such representation.

(3) The Collector of the District shall after considering the representation, if any, received by him under sub-rule (2) pass an order determining the true market value and the proper payable on the instrument."

(emphasis supplied)

In view of the aforesaid provision, the basis for arriving at the market value ought to have been pointed out to the petitioner. Similarly, it is also the duty of the Collector to pass an order determining the true market value and the proper duty payable on the instrument. Looking to the facts of the present case, no such basis has been provided for arriving at the market value nor there is any reflection of the basis of the market value fixed by the Collector in the impugned order dated 28th September,2001. Reasons always reflect the mind of the lower authority. "Reasons" is

the soul of the order. If the order is without reasons, the appellate authority cannot appreciate the order passed by the lower authority and, therefore, in the facts of the present case, looking to the basic vices in the order passed by the respondent No. 2 – Collector of Stamps, the matter is being remanded to the Collector of Stamps, Nadiad for a fresh decision in accordance with law.

(iv) The fixation of the market value is a complex phenomenon. When the party has purchased the land in question at Rs.15,000/-, the price, which is reflected in the conveyance deed, is not accepted by the respondent authority and the respondent authority has fixed the higher value for the land in question, it is for the respondent authority to justify the higher market value. Reasons ought to have been assigned for arriving at the higher market value. Any lumpsum figure whichever comes in the mind of respondent No.2 cannot be labelled as true and correct market value, unless reasons are assigned for arriving at such value. Without reasons, if the market value is fixed for the land in question, it leads to arbitrariness. The arbitrary usage of powers is also giving birth to discrimination and whenever there is discrimination, there is always a breach of right of

equality. Without assigning any reasons, if any figure is to be fixed, it can be few Lacs more or it can be few Lacs less. Petitioner cannot be thrown at the speculation of the respondent authority. Several reported as well as unreported judgments have been given by this Court, whereby, such type of cyclostyled orders have been quashed. However, it appears that the respondent authority is not paying any attention to such type of judgments and is repeatedly committing similar type of error and, therefore, citizens have to approach this Court again and again. Multifariousness of petitions could have been avoided by the respondent authority. In all the aforesaid judgments cited by the learned advocate for the petitioner, this Court has directed the Collector of Stamps, to pass a speaking order, within time limit specified under the Act,1958. A cyclostyled order, with some gaps has been filled in and two sentences are added, which clearly reflects non-application of mind. On the contrary, it is the duty vested in the respondent No.2 to justify its say for higher market value for the land in question.

6. As a cumulative effect of the aforesaid facts and circumstances of the case and looking to the judicial pronouncements referred to hereinabove, the order dated

28th September,2001 passed by the Collector of Stamps, Nadiad (Annexure "C" to the memo of the petition) is hereby quashed and set aside and, consequently, the order dated 12th January,2006 passed by the Collector of Stamps, Nadiad (Annexure "B" to the memo of the petition) is also quashed and set aside. The matter is remanded to respondent No.2 for taking a fresh decision and for passing a speaking order, as per the Act,1958 read with the Rules,1984, after giving an opportunity of being heard to the petitioner. The parties will be at liberty to make their submissions before respondent No.2, which may be dealt with by respondent No.2 while passing the order in accordance with law. Rule made absolute to the aforesaid extent with no order as to costs.

(D.N.PATEL,J)

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